

SERVED: June 8, 2005

NTSB Order No. EA-5162

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 6th day of June, 2005

Petition of)

FREDERICK JOHN PARKER)

for review of the denial by the)
Administrator of the Federal)
Aviation Administration of the)
issuance of an airman medical)
certificate.)

) Docket SM-4604

OPINION AND ORDER

Petitioner has appealed from the written decision of Administrative Law Judge William E. Fowler, Jr., issued on September 22, 2004.¹ The law judge denied petitioner's request that we order the Administrator to issue him a medical certificate. We deny the appeal. The facts are straightforward and preclude any result other than the one reached by the law judge.

¹ The initial decision is attached.

Petitioner has admitted to having an aortic valve replacement. Title 14 C.F.R. Sections 67.111, .211, and .311 prohibit issuing a first, second, or third-class medical certificate to anyone who has undergone a cardiac valve replacement. These prohibitions are clear and unambiguous and the Board has no authority to depart from them. The Board is obliged to follow all, "validly adopted interpretations of laws and regulations...available to the public related to sanctions to be imposed...unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law." See 49 U.S.C. 44709. There is no basis on the record to conclude either that these rules in Part 67 were not validly adopted, or that they are arbitrary, capricious, or not according to law. The rules are reasonable on their face. Accordingly, we may not order the Administrator to issue a first, second, or third-class airman medical certificate to petitioner.

Although petitioner, who is representing himself, did not specifically so request, the Administrator also considered whether petitioner should receive a special issuance certification under 14 C.F.R. 67.401. Section 401 provides for a discretionary issuance by the Federal Air Surgeon, on his finding that such issuance will not endanger public safety. The Federal Air Surgeon has seen fit not to issue such a certificate to petitioner. As the law judge found, we have long held that this determination is not reviewable by the Board. Petition of Doe, 5 NTSB 41, 43 (1985). Petitioner offers no reason why we would

alter that conclusion in this case.

ACCORDINGLY, IT IS ORDERED THAT:

Petitioner's appeal is denied.

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS, HEALING, and
HERSMAN, Members of the Board, concurred in the above opinion and
order.